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In the Supreme Court of the United States

OCTOBER TERM, 1948

KOKI HIROTA, PETITIONER

v.

GENERAL OF THE ARMY DOUGLAS MACARTHUR, ET AL.

KENJI DOIHARA, PETITIONER

v.

GENERAL OF THE ARMY DOUGLAS MACARTHUR, ET AL.

KOICHI KIDO, TAKASUMI OKA, KENRYO SATO, SHIGETARO SHIMADA AND SHIGENORI TOGO, PETITIONERS

v.

GENERAL OF THE ARMY DOUGLAS MACARTHUR, ET AL.

ON MOTIONS FOR LEAVE TO FILE PETITIONS FOR WRITS OF HABEAS CORPUS

DOCUMENTARY APPENDIX

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APPENDIX

I

Proclamation Defining Terms for Japanese Surrender

(The Potsdam Proclamation)

(July 26, 1945)

(1) We—The President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain, representing the hundreds of millions of our countrymen, have conferred and agree that Japan shall be given an opportunity to end this war.

(2) The prodigious land, sea and air forces of the United States, the British Empire and of China, many times reinforced by their armies and air fleets from the west, are poised to strike the final blows upon Japan. This military power is sustained and inspired by the determination of all the Allied Nations to prosecute the war against Japan until she ceases to resist.

(3) The result of the futile and senseless German resistance to the might of the aroused free peoples of the world stands forth in awful clarity as an example to the people of Japan. The might that now converges on Japan is immeasurably greater than that which, when applied to the resisting Nazis, necessarily laid waste to the lands, the industry and the method of life of the whole German people. The full application of our mili-

tary power, backed by our resolve, *will* mean the inevitable and complete destruction of the Japanese armed forces and just as inevitably the utter devastation of the Japanese homeland.

(4) The time has come for Japan to decide whether she will continue to be controlled by those self-willed militaristic advisers whose unintelligent calculations have brought the Empire of Japan to the threshold of annihilation, or whether she will follow the path of reason.

(5) Following are our terms. We will not deviate from them. There are no alternatives. We shall brook no delay.

(6) There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

(7) Until such a new order is established *and* until there is convincing proof that Japan's war-making power is destroyed, points in Japanese territory to be designated by the Allies shall be occupied to secure the achievement of the basic objectives we are here setting forth.

(8) The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.

(9) The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

(10) We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.

(11) Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to re-arm for war. To this end, access to, as distinguished from control of, raw materials shall be permitted. Eventual Japanese participation in world trade relations shall be permitted.

(12) The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.

(13) We call upon the government of Japan to proclaim now the unconditional surrender of all Japanese armed forces, and to provide proper and adequate assurances of their good faith in such action. The alternative for Japan is prompt and utter destruction.

II

First Japanese Offer of Surrender

(August 10, 1945)

The Honorable James F. Byrnes,
Secretary of State.

Sir: I have the honor to inform you that the Japanese Minister to Switzerland, upon instructions received from his Government, has requested the Swiss Political Department to advise the Government of the United States of America of the following:

"In obedience to the gracious command of His Majesty the Emperor who, ever anxious to enhance the cause of world peace, desires earnestly to bring about a speedy termination of hostilities with a view to saving mankind from the calamities to be imposed upon them by further continuation of the war, the Japanese Government several weeks ago asked the Soviet Government, with which neutral relations then prevailed, to render good offices in restoring peace vis a vis the enemy powers. Unfortunately, these efforts in the interest of peace having failed, the Japanese Government in conformity with the august wish of His Majesty to restore the general peace and desiring to put an end to the untold sufferings entailed by war as quickly as possible, have decided upon the following.

"The Japanese Government are ready to accept the terms enumerated in the joint declaration

which was issued at Potsdam on July 26th, 1945, by the heads of the Governments of the United States, Great Britain, and China, and later subscribed by the Soviet Government, with the understanding that the said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a Sovereign Ruler.

"The Japanese Government sincerely hope that this understanding is warranted and desire keenly that an explicit indication to that effect will be speedily forthcoming."

In transmitting the above message the Japanese minister added that his Government begs the Government of the United States to forward its answer through the intermediary of Switzerland. Similar requests are being transmitted to the Governments of Great Britain and the Union of Soviet Socialist Republics through the intermediary of Sweden, as well as to the Government of China through the intermediary of Switzerland. The Chinese Minister at Berne has already been informed of the foregoing through the channel of the Swiss Political Department.

Please be assured that I am at your disposal at any time to accept for and forward to my Government the reply of the Government of the United States.

Accept [etc.]

GRÄSSLI,
Chargé d'Affairs ad interim
of Switzerland.

III

Reply to First Japanese Offer of Surrender

(August 11, 1945)

Mr. Max Grässli,
Chargé d'Affaires ad interim
of Switzerland

Sir: I have the honor to acknowledge receipt of your note of August 10, and in reply to inform you that the President of the United States has directed me to send to you for transmission by your Government to the Japanese Government the following message on behalf of the Governments of the United States, the United Kingdom, the Union of Soviet Socialist Republics, and China:

"With regard to the Japanese Government's message accepting the terms of the Potsdam proclamation but containing the statement, 'with the understanding that the said declaration does not comprise any demand which prejudices the prerogatives of His Majesty as a sovereign ruler,' our position is as follows:

"From the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied powers who will take such steps as he deems proper to effectuate the surrender terms.

"The Emperor will be required to authorize and ensure the signature by the Government of Japan and the Japanese Imperial General Headquarters of the surrender terms necessary to carry out the provisions of the Potsdam Declaration,

and shall issue his commands to all the Japanese military, naval and air authorities and to all the forces under their control wherever located to cease active operations and to surrender their arms, and to issue such other orders as the Supreme Commander may require to give effect to the surrender terms.

"Immediately upon the surrender the Japanese Government shall transport prisoners of war and civilian internees to places of safety, as directed, where they can quickly be placed aboard Allied transports.

"The ultimate form of government of Japan shall, in accordance with the Potsdam Declaration, be established by the freely expressed will of the Japanese people.

"The armed forces of the Allied Powers will remain in Japan until the purposes set forth in the Potsdam Declaration are achieved."

Accept [etc.]

JAMES F. BYRNES,
Secretary of State.

IV

JAPANESE ACCEPTANCE OF POTSDAM PROCLAMATION

STATEMENT BY PRESIDENT TRUMAN

(August 14, 1945)

I have received this afternoon a message from the Japanese Government in reply to the message forwarded to that Government by the Secretary of State on August 11. I deem this reply a full acceptance of the Potsdam Declaration which specifies the unconditional surrender of Japan. In the reply there is no qualification.

Arrangements are now being made for the formal signing of surrender terms at the earliest possible moment.

General Douglas MacArthur has been appointed the Supreme Allied Commander to receive the Japanese surrender. Great Britain, Russia, and China will be represented by high-ranking officers.

Meantime, the Allied armed forces have been ordered to suspend offensive action.

The proclamation of V–J Day must wait upon the formal signing of the surrender terms by Japan.

Following is the Japanese Government's message accepting our terms:

"Communication of the Japanese Government of August 14, 1945, addressed to the Governments of the United States, Great Britain, the Soviet Union, and China:

"With reference to the Japanese Government's note of August 10 regarding their acceptance of the provisions of the Potsdam declaration and the reply of the Governments of the United States, Great Britain, the Soviet Union, and China sent by American Secretary of State Byrnes under the date of August 11, the Japanese Government have the honor to communicate to the Governments of the four powers as follows:

"1. His Majesty the Emperor has issued an Imperial rescript regarding Japan's acceptance of the provisions of the Potsdam declaration.

"2. His Majesty the Emperor is prepared to authorize and ensure the signature by his government and the Imperial General Headquarters of the necessary terms for carrying out the provi-

sions of the Potsdam declaration. His Majesty is also prepared to issue his commands to all the military, naval, and air authorities of Japan and all the forces under their control wherever located to cease active operations, to surrender arms and to issue such other orders as may be required by the Supreme Commander of the Allied Forces for the execution of the above-mentioned terms."

V

Notification to Japanese Government of Acceptance of Surrender Offer, and Surrender Orders

(August 14, 1945)

Max Grässli, Esquire,
Chargé d'Affaires ad interim of Switzerland.

Sir: With reference to your communication of today's date, transmitting the reply of the Japanese Government to the communication which I sent through you to the Japanese Government on August 11, on behalf of the Governments of the United States, China, the United Kingdom, and the Union of Soviet Socialist Republics, which I regard as full acceptance of the Potsdam Declaration and of my statement of August 11, 1945, I have the honor to inform you that the President of the United States has directed that the following message be sent to you for transmission to the Japanese Government:

"You are to proceed as follows:

"(1) Direct prompt cessation of hostilities by Japanese forces, informing the Supreme Commander for the Allied Powers of the effective date and hour of such cessation.

"(2) Send emissaries at once to the Supreme Commander for the Allied Powers with information of the disposition of the Japanese forces and commanders, and fully empowered to make any arrangements directed by the Supreme Commander for the Allied Powers to enable him and his accompanying forces to arrive at the place designated by him to receive the formal surrender.

"(3) For the purpose of receiving such surrender and carrying it into effect, General of the Army Douglas MacArthur has been designated as the Supreme Commander for the Allied Powers, and he will notify the Japanese Government of the time, place and other details of the formal surrender."

Accept [etc.]

JAMES F. BYRNES,
Secretary of State.

VI

Instrument of Surrender

September 2, 1945 (Tokyo Time)

We, acting by command of and in behalf of the Emperor of Japan, the Japanese Government and the Japanese Imperial General Headquarters, hereby accept the provisions set forth in the declaration issued by the heads of the Governments of the United States, China and Great Britain on 26 July 1945 at Potsdam, and subsequently adhered to by the Union of Soviet Socialist Republics, which four powers are hereafter referred to as the Allied Powers.

We hereby proclaim the unconditional surrender to the Allied Powers of the Japanese Imperial General Headquarters and of all Japanese armed forces and all armed forces under Japanese control wherever situated.

We hereby command all Japanese forces wherever situated and the Japanese people to cease hostilities forthwith, to preserve and save from damage all ships, aircraft, and military and civil property and to comply with all requirements which may be imposed by the Supreme Commander for the Allied Powers or by agencies of the Japanese Government at his direction.

We hereby command the Japanese Imperial General Headquarters to issue at once orders to the Commanders of all Japanese forces and all forces under Japanese control wherever situated to surrender unconditionally themselves and all forces under their control.

We hereby command all civil, military and naval officials to obey and enforce all proclamations, orders and directives deemed by the Supreme Commander for the Allied Powers to be proper to effectuate this surrender and issued by him or under his authority and we direct all such officials to remain at their posts and to continue to perform their non-combatant duties unless specifically relieved by him or under his authority.

We hereby undertake for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration.

We hereby command the Japanese Imperial Government and the Japanese Imperial General Headquarters at once to liberate all allied prisoners of war and civilian internees now under Japanese control and to provide for their protection, care, maintenance and immediate transportation to places as directed.

The authority of the Emperor and the Japanese Government to rule the State shall be subject to the Supreme Commander for the Allied Powers who will take such steps as he deems proper to effectuate these terms of surrender.

Signed at TOKYO BAY, JAPAN at 0914 I
on the SECOND day of SEPTEMBER, 1945

重光葵

By Command and in behalf of the Emperor of Japan and the Japanese Government.

梅津美治郎

By Command and in behalf of the Japanese Imperial General Headquarters.

Accepted at TOKYO BAY, JAPAN at 0908 I
on the SECOND day of SEPTEMBER, 1945,
for the United States, Republic of China, United Kingdom and the Union of Soviet Socialist Republics, and in the interests of the other United Nations at war with Japan.

Douglas MacArthur
Supreme Commander for the Allied Powers.

C. W. Nimitz
United States Representative

徐永昌
Republic of China Representative

Bruce Fraser
United Kingdom Representative

Union of Soviet Socialist Republics Representative

[illegible]
Commonwealth of Australia Representative

[illegible]
Dominion of Canada Representative

[illegible]
Provisional Government of the French Republic Representative

[illegible]
Kingdom of the Netherlands Representative

Leonard M. Isitt
Dominion of New Zealand Representative

VII

Imperial Rescript Announcing Surrender to the Japanese People

(September 2, 1945 (Tokyo Time))

Accepting the terms set forth in Declaration issued by the heads of the Governments of the United States, Great Britain and China on July 26th, 1945 at Potsdam and subsequently adhered to by the Union of Soviet Socialist Republics, We have commanded the Japanese Imperial Government and the Japanese Imperial General Headquarters to sign on Our behalf the Instrument of Surrender presented by the Supreme Commander for the Allied Powers and to issue General Orders to the Military and Naval Forces in accordance with the direction of the Supreme Commander for the Allied Powers. We command all Our people forthwith to cease hostilities, to lay down their arms and faithfully to carry out all the provisions of Instrument of Surrender and the General Orders issued by the Japanese Imperial Government and the Japanese Imperial General Headquarters hereunder.

This second day of the ninth month of the twentieth year of Syōwa.

[Seal of the Emperor]

HIROHITO

NARUHIKO-Ō
Prime Minister
MAMORU SHIGEMITSU
Minister for Foreign Affairs
IWAO YAMAZAKI
Minister for Home Affairs
JUICHI TSUSHIMA
Minister of Finance
SADAMU SHIMOMURA
Minister of War
MITSUMASA YONAI
Minister of Navy
CHUZO IWATA
Minister of Justice
TAMON MAEDA
Minister of Education
KENZO MATSUMURA
Minister of Welfare
KOTARO SENGOKU
Minister of Agriculture and Forestry
CHIKUHEI NAKAJIMA
Minister of Commerce and Industry
NAOTO KOBIYAMA
Minister of Transportation
FUMIMARO KONOE
Minister without Portfolio
TAKETORA OGATA
Minister without Portfolio
BINSHIRO OBATA
Minister without Portfolio

VIII

Agreement of Foreign Ministers at Moscow on Establishing Far Eastern Commission and Allied Council for Japan

(December 27, 1945)

The Foreign Ministers of the Union of Soviet Socialist Republics, the United Kingdom, and the United States of America met in Moscow from December 16 to December 26, 1945, in accordance with the decision of the Crimea Conference, confirmed at the Berlin Conference, that there should be periodic consultation between them. At the meeting of the three Foreign Ministers, discussions took place on an informal and exploratory basis and agreement was reached on

* * *

* * * * *

Far Eastern Commission and Allied Council for Japan

A. FAR EASTERN COMMISSION

Agreement was reached, with the concurrence of China, for the establishment of a Far Eastern Commission to take the place of the Far Eastern Advisory Commission. The Terms of Reference for the Far Eastern Commission are as follows:

I. Establishment of the Commission

A Far Eastern Commission is hereby established composed of the representatives of the Union of Soviet Socialist Republics, United Kingdom, United States, China, France, the Netherlands, Canada, Australia, New Zealand, India, and the Philippine Commonwealth.

II. Functions

A. The functions of the Far Eastern Commission shall be:

1. To formulate the policies, principles, and standards in conformity with which the fulfillment by Japan of its obligations under the Terms of Surrender may be accomplished.

2. To review, on the request of any member, any directive issued to the Supreme Commander for the Allied Powers or any action taken by the Supreme Commander involving policy decisions within the jurisdiction of the Commission.

3. To consider such other matters as may be assigned to it by agreement among the participating Governments reached in accordance with the voting procedure provided for in Article V–2 hereunder.

B. The Commission shall not make recommendations with regard to the conduct of military

operations nor with regard to territorial adjustments.

C. The Commission in its activities will proceed from the fact that there has been formed an Allied Council for Japan and will respect existing control machinery in Japan, including the chain of command from the United States Government to the Supreme Commander and the Supreme Commander's command of occupation forces.

III. Functions of the United States Government

1. The United States Government shall prepare directives in accordance with policy decisions of the Commission and shall transmit them to the Supreme Commander through the appropriate United States Government agency. The Supreme Commander shall be charged with the implementation of the directives which express the policy decisions of the Commission.

2. If the Commission decides that any directive or action reviewed in accordance with Article II–A–2 should be modified, its decision shall be regarded as a policy decision.

3. The United States Government may issue interim directives to the Supreme Commander pending action by the Commission whenever urgent matters arise not covered by policies already formulated by the Commission; provided that any directives dealing with fundamental changes in the Japanese constitutional structure or in the regime of control, or dealing with a change in the Japanese Government as a whole will be issued only following consultation and following the attainment of agreement in the Far Eastern Commission.

4. All directives issued shall be filed with the Commission.

IV. Other Methods of Consultation

The establishment of the Commission shall not preclude the use of other methods of consultation on Far Eastern issues by the participating Governments.

V. Composition

1. The Far Eastern Commission shall consist of one representative of each of the States party to this agreement. The membership of the Commission may be increased by agreement among the participating Powers as conditions warrant by the addition of representatives of other United Nations in the Far East or having territories therein. The Commission shall provide for full and adequate consultations, as occasion may require, with representatives of the United Nations not members of the Commission in regard to matters before the Commission which are of particular concern to such nations.

2. The Commission may take action by less than unanimous vote provided that action shall have the concurrence of at least a majority of all the representatives including the representatives of the four following Powers: United States, United Kingdom, Union of Soviet Socialist Republics and China.

VI. Location and Organization

1. The Far Eastern Commission shall have its headquarters in Washington. It may meet at other places as occasion requires, including Tokyo, if and when it deems it desirable to do so. It may make such arrangements through the Chair-

man as may be practicable for consultation with the Supreme Commander for the Allied Powers.

2. Each representative on the Commission may be accompanied by an appropriate staff comprising both civilian and military representation.

3. The Commission shall organize its secretariat, appoint such committees as may be deemed advisable, and otherwise perfect its organization and procedure.

VII. Termination

The Far Eastern Commission shall cease to function when a decision to that effect is taken by the concurrence of at least a majority of all the representatives including the representatives of the four following powers: United States, United Kingdom, Union of Soviet Socialist Republics and China. Prior to the termination of its functions the Commission shall transfer to any interim or permanent security organization of which the participating governments are members those functions which may appropriately be transferred.

It was agreed that the Government of the United States on behalf of the four Powers should present the Terms of Reference to the other Governments specified in Article I and invite them to participate in the Commission on the revised basis.

B. ALLIED COUNCIL FOR JAPAN

The following agreement was also reached, with the concurrence of China, for the establishment of an Allied Council for Japan:

1. There shall be established an Allied Council with its seat in Tokyo under the chairmanship

of the Supreme Commander for the Allied Powers (or his Deputy) for the purpose of consulting with and advising the Supreme Commander in regard to the implementation of the Terms of Surrender, the occupation and control of Japan, and of directives supplementary thereto; and for the purpose of exercising the control authority herein granted.

2. The membership of the Allied Council shall consist of the Supreme Commander (or his Deputy) who shall be Chairman and United States member; a Union of Soviet Socialist Republics member; a Chinese member; and a member representing jointly the United Kingdom, Australia, New Zealand, and India.

3. Each member shall be entitled to have an appropriate staff consisting of military and civilian advisers.

4. The Allied Council shall meet not less often than once every two weeks.

5. The Supreme Commander shall issue all orders for the implementation of the Terms of Surrender, the occupation and control of Japan, and directives supplementary thereto. In all cases action will be carried out under and through the Supreme Commander who is the sole executive authority for the Allied Powers in Japan. He will consult and advise with the Council in advance of the issuance of orders on matters of substance, the exigencies of the situation permitting. His decisions upon these matters shall be controlling.

6. If, regarding the implementation of policy decisions of the Far Eastern Commission on questions concerning a change in the regime of con-

trol, fundamental changes in the Japanese constitutional structure, and a change in the Japanese Government as a whole, a member of the Council disagrees with the Supreme Commander (or his Deputy), the Supreme Commander will withhold the issuance of orders on these questions pending agreement thereon in the Far Eastern Commission.

7. In cases of necessity the Supreme Commander may take decisions concerning the change of individual Ministers of the Japanese Government, or concerning the filling of vacancies created by the resignation of individual cabinet members, after appropriate preliminary consultation with the representatives of the other Allied Powers on the Allied Council.

* * * * *

IX

Establishment of an International Military Tribunal for the Far East

(SCAP Special Proclamation, January 19, 1946)

Whereas, the United States and the Nations allied therewith in opposing the illegal wars of aggression of the Axis Nations, have from time to time made declarations of their intentions that war criminals should be brought to justice;

Whereas, the Governments of the Allied Powers at war with Japan on the 26th July 1945 at Potsdam, declared as one of the terms of surrender that stern justice shall be meted out to all war criminals including those who have visited cruelties upon our prisoners;

WHEREAS, by the Instrument of Surrender of Japan executed at Tokyo Bay, Japan, on the 2nd September 1945, the signatories for Japan, by command of and in behalf of the Emperor and the Japanese Government, accepted the terms set forth in such Declaration at Potsdam;

WHEREAS, by such Instrument of Surrender, the authority of the Emperor and the Japanese Government to rule the state of Japan is made subject to the Supreme Commander for the Allied Powers, who is authorized to take such steps as he deems proper to effectuate the terms of surrender;

WHEREAS, the undersigned has been designated by the Allied Powers as Supreme Commander for the Allied Powers to carry into effect the general surrender of the Japanese armed forces;

WHEREAS, the Governments of the United States, Great Britain and Russia at the Moscow Conference, 26th December 1945, having considered the effectuation by Japan of the Terms of Surrender, with the concurrence of China have agreed that the Supreme Commander shall issue all Orders for the implementation of the Terms of Surrender.

NOW, THEREFORE, I, Douglas MacArthur, as Supreme Commander for the Allied Powers, by virtue of the authority so conferred upon me, in order to implement the Term of Surrender which requires the meting out of stern justice to war criminals, do order and provide as follows:

ARTICLE 1. There shall be established an International Military Tribunal for the Far East for the trial of those persons charged individually, or as members of organizations, or in both capac-

ities, with offenses which include crimes against peace.

ARTICLE 2. The Constitution, jurisdiction and functions of this Tribunal are those set forth in the Charter of the International Military Tribunal for the Far East, approved by me this day.

ARTICLE 3. Nothing in this Order shall prejudice the jurisdiction of any other international, national or occupation court, commission or other tribunal established or to be established in Japan or in any territory of a United Nation with which Japan has been at war, for the trial of war criminals.

Given under my hand at Tokyo, this 19th day of January, 1946.

DOUGLAS MACARTHUR,
General of the Army, United States Army,
Supreme Commander for the Allied Powers.

X

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

(as approved on January 19, 1946)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS
NO. 1 — APO 500, *19 January 1946*

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Proclamation of the Supreme Commander for the Allied Powers dated 19 January 1946 established an International Military Tribunal for the Far East. Charter of this Tribunal is as follows:

SECTION I

CONSTITUTION OF TRIBUNAL

ARTICLE 1. *Tribunal Established.* The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

ARTICLE 2. *Members.* The Tribunal shall consist of not less than five nor more than nine Members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender.

ARTICLE 3. *Officers and Secretariat.*

a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

b. Secretariat.

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its Members, and perform such other duties as may be designated by the Tribunal.

ARTICLE 4. *Quorum and Voting.*

a. Quorum. The presence of a majority of all Members shall be necessary to constitute a quorum.

b. Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those Members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

SECTION II

JURISDICTION AND GENERAL PROVISIONS

ARTICLE 5. *Jurisdiction Over Persons and Offenses.* The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a. Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

b. Conventional War Crimes: Namely, violations of the laws or customs of war;

c. Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any

civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

ARTICLE 6. *Responsibility of Accused.* Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

ARTICLE 7. *Rules of Procedure.* The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

ARTICLE 8. *Counsel.*

a. Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal, and will render such legal assistance to the Supreme Commander as is appropriate.

b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

SECTION III

FAIR TRIAL FOR ACCUSED

ARTICLE 9. *Procedure for Fair Trial.* In order to insure fair trial for the accused, the following procedure shall be followed:

a. Indictment. The indictment shall consist of a plain, concise and adequate statement of each offense charged. Each accused shall be furnished in adequate time for defense a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

b. Hearing. During the trial or any preliminary proceedings the accused shall have the right to give any explanation relevant to the charges made against him.

c. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

d. Counsel for Accused. Each accused shall be represented by counsel of his own selection, subject to disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel or of counsel whom he desires the Tribunal to Appoint. If an accused is not represented by counsel, the Tribunal shall designate counsel for him.

e. Evidence for Defense. An accused shall have the right through himself or through his counsel to present evidence at the trial in support of his defense, and to examine any witness called by the prosecution, subject to such reasonable restrictions as the Tribunal may determine.

f. Production of Evidence for the Defense. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application, the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

ARTICLE 10. *Applications and Motions before Trial.* All motions, applications or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

SECTION IV

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

ARTICLE 11. *Powers.* The Tribunal shall have the power:

a. To summon witnesses to the trial, to require them to attend and testify, and to question them.

b. To interrogate each accused and to permit comment on his refusal to answer any question.

c. To require the production of documents and other evidentiary material.

d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.

e. To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

ARTICLE 12. *Conduct of Trial.* The Tribunal shall:

a. Confine the trial strictly to an expeditious hearing of the issues raised by the charges.

b. Take strict measures to prevent any action which would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.

c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

d. Determine the mental and physical capacity of any accused to proceed to trial.

ARTICLE 13. ***Evidence.***

a. Admissibility. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.

b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

c. Specific evidence admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or is-

sued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.

(3) An affidavit, deposition or other signed statement.

(4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.

(5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

d. Judicial Notice. The Tribunal shall not require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records and findings of military or other agencies of any of the United Nations.

e. Records, Exhibits and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

ARTICLE 14. *Place of Trial.* The first trial will be held at Tokyo and any subsequent trials will be held at such places as the Tribunal decides.

ARTICLE 15. *Course of Trial Proceedings.* The proceedings at the Trial will take the following course:

a. The indictment will be read in court unless the reading is waived by all accused.

b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty".

c. The prosecution and each accused may make a concise opening statement.

d. The prosecution and defense may offer evidence and the admissibility of the same shall be determined by the Tribunal.

e. The prosecution and counsel for the accused may examine each witness and each accused who gives testimony.

f. Counsel for the accused may address the Tribunal.

g. The prosecution may address the Tribunal.

h. The Tribunal will deliver judgment and pronounce sentence.

SECTION V

JUDGMENT AND SENTENCE

ARTICLE 16. *Penalty.* The Tribunal shall have the power to impose upon an accused, on conviction, death or such other punishment as shall be determined by it to be just.

ARTICLE 17. *Judgment and Review.* The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action thereon. A sentence will be carried out in accordance with the Order of the Supreme

Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence except to increase its severity.

By command of General MACARTHUR:

RICHARD J. MARSHALL,
Major General, General Staff Corps,
Chief of Staff.

Official:
H W ALLEN
for
B. M. FITCH,
Brigadier General, AGD,
Adjutant General.

XI

Apprehension, Trial and Punishment of War Criminals in the Far East

(Far Eastern Commission Policy Decision, April 3, 1946)

1. The term "war crimes" as used herein, includes:

a. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements and assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

b. Violations of the laws or customs of war. Such violations shall include but not be limited to murder, ill treatment or deportation to slave labor or for any other purpose of civilian population of, or in, occupied territory, murder or ill treatment of prisoners of war or persons on the seas, or elsewhere improper treatment of hostages, plunder of public or private property, wanton destruction of

cities, towns or villages or devastation not justified by military necessity.

c. Murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war or prosecutions on political, racial or religious grounds in execution of or in connection with any crime defined herein whether or not in violation of the domestic law of the country where perpetrated.

2. The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest but, in general, should have been committed since, or in the period immediately preceding the Mukden incident of September 18, 1931. The preponderance of cases may be expected to relate to the years since the Lukouchiao incident of July 7, 1937.

3. All practicable measures should be taken to identify, investigate, apprehend, and detain all persons suspected of having committed war crimes, as defined in paragraph 1 above, and all persons whom any one of the United Nations or Italy charges with such crimes.

4. Suspected war criminals should be held in close confinement, without access to the press or other media of public information, and without distinction as to rank or position, as befits ordinary criminals.

5. The Supreme Commander for the Allied Powers should have:

(*a*) power to appoint special international military courts (which term should be held to include tribunals of any type) composed of military, naval, or air force officers or civilians represent-

ing any two or more of the states members of the Far Eastern Commission for the trial under any applicable law, domestic or international, including the laws and customs of war, of the Far Eastern war criminals indicted by the Governments of these states, and

(*b*) power to prescribe, subject to consultation with the representatives of those governments, rules of procedure for such courts. The Supreme Commander shall appoint to each international court a judge nominated by each state represented on the Far Eastern Commission which signifies its desire to participate in the work of such court. In the appointment of the international courts and in all trials before them, the international character of the courts and of the authority by which they were appointed and under which they act should be properly emphasized and recognized, particularly in dealings with the Japanese people. The Supreme Commander for the Allied Powers should have, (1) the responsibility for carrying out the judgments of any international courts appointed by him, and (2) the power to approve, reduce or otherwise alter any sentences imposed by any such courts, but not to increase the severity thereof, after consultation with the Allied Council for Japan and the Representatives in Japan of the other Powers, members of the Far Eastern Commission.

6. The Supreme Commander for the Allied Powers (*a*) should promptly establish an agency, acting under his Command to investigate reports of war crimes, to collect and analyze evidence, to arrange for the apprehension and prompt trial of suspects, to prepare, supervise and conduct the

prosecution of individuals and organizations before international military courts or tribunals, and to recommend to the Supreme Commander which individuals and organizations should be prosecuted, before what courts they should be tried and what persons should be secured as witnesses, and (*b*) should provide, after discussion with the local representatives of the nations involved, and in a manner consistent with efficient administration, for equitable inclusion in the membership of such agency of suitable representatives of the States members of the Far Eastern Commission. This agency should advise the Supreme Commander and other Military commanders for the Allies on matters relating to war criminals. This agency should attach importance to the investigation of the evidence that offenses of the type described in paragraph 1*a* above have been committed, should collect and analyze the evidence of such offenses and should recommend to the Supreme Commander a plan as indicated in paragraph 5 above for the appointment of an international court for the trial of such offenses and the charges to be preferred. This agency should also maintain a central record and information office of Japanese war criminals and war crimes, the records and files of which should be available to any interested United Nation.

7. The military command of any nation (including the United States) participating in the occupation of areas previously dominated by Japan may establish special national military courts to deal with war criminals not held or requested by the Supreme Commander for trial by an international military court or tribunal of

the types referred to in paragraph 6 above. Such courts should be separate from courts which may be set up to deal with current offenses against the occupation or infractions of military discipline.

8. Military commanders of forces of occupation in the Far East should promptly comply with a request by the government of any one of the United Nations or Italy for the delivery to it of any person who is stated in such request to be charged with a war crime, subject to the following exceptions:

(1) Persons who have held high political, civil or military positions in the Japanese Empire or in one of its allies, co-belligerents or satellites, should not be delivered, pending decision whether such person should be tried before an international military court or tribunal. Suspected war criminals desired for trial before such a court or tribunal or persons desired as witnesses at such trials will not be turned over to the nation requesting them so long as their presence is desired in connection with such trials.

(2) Where persons are requested by more than one of the Governments above-mentioned for trial of a war crime, the military commanders concerned should make their determinations based on all circumstances, including the relative seriousness of the respective charges against such a person and the national interests involved, and should deliver the requested person to a particular United Nation or Italy accordingly.

9. Compliance with any request for the delivery of a suspected war criminal should not be delayed on the ground that other requests for the same person are anticipated.

10. Delivery of a suspected war criminal to a requesting government should be subject to the condition that if such person is not brought to trial, tried and convicted within six months from the date he is so delivered, he will be returned to the authority who made delivery if he has been requested for trial by any of the other United Nations or Italy.

11. Military commanders should take under their control, pending subsequent decisions as to its eventual disposition, property, real and personal, found in areas of their respective jurisdiction and owned or controlled by persons taken into custody pursuant to the provisions of paragraph 3 above.

12. Such measures as are deemed necessary should be taken to insure that witnesses to war crimes will be available when required.

13. The execution of death sentences should be deferred if there is reason to believe that the testimony of those convicted would be of value in the trial of other war criminals.

14. Any national of any United Nation who may be requested, or who there is reason to believe may be desired, by his government as a renegade or quisling, should be arrested. Such person should normally be turned over as soon as practicable to their government.

15. Military commanders having custody of alleged offenders requested under paragraphs 8 and 14 above, if in doubt as to whether such persons should be turned over to the demanding nation for trial, should consult their government and, in appropriate cases, leave the matter to be dealt with through diplomatic channels.

Within the main islands of Japan, the Supreme Commander for the Allied Powers will have custody of such alleged offenders and should consult the Joint Chiefs of Staff in cases of doubt.

XII

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

(As approved on April 26, 1946)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS
No. 20

APO 500
26 April 1946

General Orders No. 1, General Headquarters, Supreme Commander for the Allied Powers, 19 January 1946, subject as below, is superseded. The Charter of the International Military Tribunal for the Far East established by Proclamation of the Supreme Commander for the Allied Powers, 19 January 1946, is amended, and as amended, reads as follows:

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

SECTION I

CONSTITUTION OF TRIBUNAL

ARTICLE 1. *Tribunal Established.* The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

ARTICLE 2. *Members.* The Tribunal shall consist of not less than six members nor more than

eleven members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines.

ARTICLE 3. *Officers and Secretariat.*

a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

b. Secretariat.

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its members, and perform such other duties as may be designated by the Tribunal.

ARTICLE 4. *Convening and Quorum, Voting, and Absence.*

a. Convening and Quorum. When as many as six members of the Tribunal are present, they may convene the Tribunal in formal session. The presence of a majority of all members shall be necessary to constitute a quorum.

b. Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those members of

the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

c. Absence. If a member at any time is absent and afterwards is able to be present, he shall take part in all subsequent proceedings, unless he declares in open court that he is disqualified by reason of insufficient familiarity with the proceedings which took place in his absence.

SECTION II

JURISDICTION AND GENERAL PROVISIONS

ARTICLE 5. *Jurisdiction Over Persons and Offenses.* The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a. Crimes against Peace. Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

b. Conventional War Crimes. Namely, violations of the laws or customs of war;

c. Crimes against Humanity. Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial

grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

ARTICLE 6. *Responsibility of Accused.* Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

ARTICLE 7. *Rules of Procedure.* The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

ARTICLE 8. *Counsel.*

a. Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal and will render such legal assistance to the Supreme Commander as is appropriate.

b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel:

SECTION III

FAIR TRIAL FOR ACCUSED

ARTICLE 9. *Procedure for Fair Trial.* In order to insure fair trial for the accused the following procedure shall be followed:

a. Indictment. The indictment shall consist of a plain, concise, and adequate statement of each offense charged. Each accused shall be furnished, in adequate time for defense, a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

b. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

c. Counsel for Accused. Each accused shall have the right to be represented by counsel of his own selection, subject to the disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel. If an accused is not represented by counsel and in open court requests the appointment of counsel, the Tribunal shall designate counsel for him. In the absence of such request the Tribunal may appoint counsel for an accused if in its judgment such appointment is necessary to provide for a fair trial.

d. Evidence for Defense. An accused shall have the right, through himself or through his counsel (but not through both), to conduct his defense, including the right to examine any witness, subject to such reasonable restrictions as the Tribunal may determine.

e. Production of Evidence for the Defense. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

ARTICLE 10. *Applications and Motions before Trial.* All motions, applications, or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

SECTION IV

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

ARTICLE 11. *Powers.* The Tribunal shall have the power:

a. To summon witnesses to the trial, to require them to attend and testify, and to question them.

b. To interrogate each accused and to permit comment on his refusal to answer any question.

c. To require the production of documents and other evidentiary material.

d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.

e. To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

ARTICLE 12. *Conduct of Trial.* The Tribunal shall:

a. Confine the trial strictly to an expeditious hearing of the issues raised by the charges.

b. Take strict measures to prevent any action which would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.

c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

d. Determine the mental and physical capacity of any accused to proceed to trial.

ARTICLE 13. *Evidence.*

a. Admissibility. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.

b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

c. Specific evidence admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or is-

sued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.

(3) An affidavit, deposition or other signed statement.

(4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.

(5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

d. Judicial Notice. The Tribunal shall neither require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records, and findings of military or other agencies of any of the United Nations.

e. Records, Exhibits, and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

ARTICLE 14. *Place of Trial.* The first trial will be held at Tokyo, and any subsequent trials will be held at such places as the Tribunal decides.

ARTICLE 15. *Course of Trial Proceedings.* The proceedings at the Trial will take the following course:

a. The indictment will be read in court unless the reading is waived by all accused.

b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty".

c. The prosecution and each accused (by counsel only, if represented) may make a concise opening statement.

d. The prosecution and defense may offer evidence, and the admissibility of the same shall be determined by the Tribunal.

e. The prosecution and each accused (by counsel only, if represented) may examine each witness and each accused who gives testimony.

f. Accused (by counsel only, if represented) may address the Tribunal.

g. The prosecution may address the Tribunal.

h. The Tribunal will deliver judgment and pronounce sentence.

SECTION V

JUDGEMENT AND SENTENCE

ARTICLE 16. *Penalty.* The Tribunal shall have the power to impose upon an accused, on conviction, death, or such other punishment as shall be determined by it to be just.

ARTICLE 17. *Judgment and review.* The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action. Sentence will be carried out in accordance with the Order of the Supreme Commander

for the Allied Powers, who may at any time reduce or otherwise alter the sentence, except to increase its severity.

By command of General MacArthur:

RICHARD J. MARSHALL,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

B. M. FITCH,
Brigadier General, AGD,
Adjutant General.

XIII

APPOINTMENT OF MEMBERS OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS
No. 7

APO 500
15 February 1946

APPOINTMENT OF MEMBERS OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

1. In order to implement the Instrument of Surrender of Japan executed at Tokyo Bay, Japan, on 2 September 1945, and Paragraph 10 of the Potsdam Agreement of 26 July 1945, and in furtherance of Article 2 of the Charter of the International Military Tribunal for the Far East, the following nominees of their respective countries are hereby appointed as members of the International Military Tribunal for the Far East for the trial of such persons as may be properly brought before it:

The Honorable Sir William Flood Webb (Commonwealth of Australia)

The Honorable Mr. Justice E. Stuart McDougall (Dominion of Canada)

The Honorable Ju-Ao Mei (Republic of China)

The Honorable Mr. Henri Reimburger (Republic of France)

Professor Bernard Victor A. Roling (Kingdom of the Netherlands)

The Honorable Mr. Justice Erima Harvey Northcroft (Dominion of New Zealand)

The Honorable Mr. Justice I. M. Zaryanov (Union of Soviet Socialist Republics)

The Honorable Lord Patrick (United Kingdom)

The Honorable Mr. Justice John P. Higgins (United States of America)

2. The Honorable Sir William Flood Webb is designated as President of the International Military Tribunal for the Far East.

3. The Charter of the International Military Tribunal for the Far East (Article 1) provides that the permanent seat of the Tribunal is in Tokyo.

4. The responsibilities, powers and duties of the members of the Tribunal are set forth in the Charter thereof, published as General Orders No. 1 of this Headquarters, 19 January 1946.

By command of General MacArthur:

Richard J. Marshall,
Major General, General Staff Corps,
Chief of Staff.

Official:

s/ B. M. Fitch,
t/ B. M. Fitch,
Brigadier General, AGD,
Adjutant General.

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS
No. 15

APO 500
5 April 1946.

APPOINTMENT OF MEMBERS OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

1. By authority contained in paragraph 1, General Orders No. 7, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 15 February 1946, the Honorable Henri Bernard (Republic of France) is appointed member of the International Military Tribunal for the Far East, vice The Honorable Henri Reimburger, (Republic of France) resigned.

2. So much of paragraph 1, General Orders No. 7, General Headquarters, Supreme Commander for the Allied Powers, APO 500, 15 February 1946, as reads "Professor Bernard Victor A. Roling (Kingdom of the Netherlands)" is changed to read "The Honorable Bernard Victor A. Roling (Kingdom of the Netherlands)".

By command of General MACARTHUR:

RICHARD J. MARSHALL,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:

s/ B. M. FITCH,
t/ B. M. Fitch,
Brigadier General, ACD,
Adjutant General.

XIV

INDICTMENT[1]

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

No. 1

THE UNITED STATES OF AMERICA, THE REPUBLIC OF CHINA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, THE COMMONWEALTH OF AUSTRALIA, CANADA, THE REPUBLIC OF FRANCE, THE KINGDOM OF THE NETHERLANDS, NEW ZEALAND, INDIA, AND THE COMMONWEALTH OF THE PHILIPPINES.

AGAINST

ARAKI, Sadao; DOHIHARA, Kenji; HASHIMOTO, Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro; HIROTA, Koki; HOSHINO, Naoki; ITAGAKI, Seishiro; KAYA, Okinori; KIDO, Koichi; KIMURA, Heitaro; KOISO, Kuniaki; MATSUI, Iwane; MATSUOKA, Yosuke; MINAMI, Jiro; MUTO, Akira; NAGANO, Osami; OKA, Takasumi; OKAWA, Shumei; OSHIMA, Hiroshi; SATO,

[1] The appendixes to the indictment are omitted. They are:

Appendix A: Summarized Particulars Showing the Principal Matters and Events Upon Which the Prosecution Will Rely in Support of the Several Counts of the Indictment in Group One.

Appendix B: List of Articles of Treaties Violated by Japan and Incorporated in Groups One and Two.

Appendix C: List of Official Assurances Violated by Japan and Incorporated in Group One.

Appendix D: Incorporated in Group Three.

Appendix E: Statement of Individual Responsibility for Crimes Set Out in the Indictment.

Kenryo; SHIGEMITSU, Mamoru; SHIMADA, Shigetaro; SHIRATORI, Toshio; SUZUKI, Teiichi; TOGO, Shigenori; TOJO, Hideki; UMEZU, Yoshijiro. Accused.

In the years hereinafter referred to in this Indictment the internal and foreign policies of Japan were dominated and directed by a criminal, militaristic clique, and such policies were the cause of serious world troubles, aggressive wars, and great damage to the interests of peace-loving peoples, as well as to the interests of the Japanese people themselves.

The mind of the Japanese people was systematically poisoned with harmful ideas of the alleged racial superiority of the Japanese over other peoples of Asia and even of the whole world. Such parliamentary institutions as existed in Japan were used as implements for widespread aggression, and a system similar to those then established by Hitler and the Nazi party in Germany and by the Fascist party in Italy was introduced. The economic and financial resources of Japan were to a large extent mobilized for war aims, to the detriment of the welfare of the Japanese people.

A conspiracy among the accused, joined in by the rulers of other aggressive countries, namely, Nazi Germany and Fascist Italy, was entered into. The main objects of this conspiracy was to secure the domination and exploitation by the aggressive States of the rest of the world, and to this end to commit, or encourage the commission of crimes against peace, war crimes, and crimes against humanity as defined in the Charter of this Tribunal, thus threatening and injuring the basic

principles of liberty and respect for the human personality.

In the promotion and accomplishment of that scheme, these accused, taking advantage of their power and their official positions and their own personal prestige and influence, intended to and did plan, prepare, initiate, or wage aggressive war against the United States of America, the Republic of China, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Commonwealth of Australia, Canada, the Republic of France, the Kingdom of the Netherlands, New Zealand, India, the Commonwealth of the Philippines, and other peaceful nations, in violation of international law, as well as in violation of sacred treaty commitments, obligations and assurances. In furtherance of such scheme the accused contemplated and carried out the violation of recognized customs and conventions of war by murdering, maiming and ill-treating prisoners of war, civilian internees, and persons on the high seas, denying them adquate food, shelter, clothing, medical care, or other appropriate attention, forcing them to labour under inhumane conditions, and subjecting them to indignities; the exploitation to Japan's benefit of the manpower and economic resources of the vanquished nations; the plundering of public and private property; the wanton destruction of cities, towns and villages beyond any justification of military necessity; the perpetration of mass murder, rape, pillage, brigandage, torture, and other barbaric cruelties upon the helpless civilian population of the over-run countries; the increase of the in-

fluence and control of the military and naval groups over Japanese government officials and agencies; the psychological preparation of Japanese public opinion for aggressive warfare by establishing so-called Assistance Societies, by teaching nationalistic policies of expansion, by disseminating war propaganda, and by exercising strict control over the press and radio; the setting up of "puppet" governments in conquered countries; and the conclusion of military alliances with Germany and Italy to enhance by military might Japan's programme of expansion.

Therefore, the above named Nations by their undersigned representatives, duly appointed to represent their respective Governments in the investigation of the charges against and the prosecution of the Major War Criminals, pursuant to the Potsdam Declaration of the 20th July, 1945, and the Instrument of Surrender of the 2nd September, 1945, and the Charter of the Tribunal, promulgated by the Supreme Commander for the Allied Powers on 19th January, 1946 and amended 26th April, 1946, hereby accuse as guilty, in the respects hereinafter set forth, of Crimes against Peace, War Crimes, and Crimes against Humanity, and of Common Plans or Conspiracies to commit those Crimes, all as defined in the Charter of the Tribunal, and accordingly name as the accused in this cause and as indicted on the Counts hereinafter set out in which their names respectively appear, all the above-named individuals.

GROUP ONE: CRIMES AGAINST PEACE

The following counts charge Crimes against Peace, being acts for which it is charged that each of the persons named are individually responsible in accordance with Article 5 and particularly Article 5 (a) of the Charter of the International Military Tribunal for the Far East, and in accordance with International Law.

Count 1

All the accused together with other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries bordering thereon and islands therein, and for that purpose they conspired that Japan should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against any country or countries which might oppose that purpose.

The whole of the Particulars in Appendix A, of the Treaty Articles in Appendix B, and of the Assurances in Appendix C, relate to this Count.

Count 2

All the accused together with other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of the provinces of Liaoning, Kirin, Heilungkiang, and Jehol, being parts of the Republic of China, either directly or by establishing a separate state under the control of Japan, and for that purpose they conspired that Japan should wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the Republic of China.

The whole of the Particulars in Appendix A; the following Treaty Articles in Appendix B: Nos. 1 to 6 inclusive, 8 to 14 inclusive, 22 to 30 inclusive, 32 to 35 inclusive; and the following Assurances in appendix C: Nos. 1 to 8 inclusive, relate to this Count.

Count 3

All the accused together with other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the miltary, naval, political and economic domination of the Republic of China, either directly or by establishing a separate state or states under the control of Japan, and for that purpose they conspired that Japan should wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the Republic of China.

The whole of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 2, relate to this Count.

Count 4

All the accused together with other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries bordering thereon and islands therein, and for that purpose they conspired that Japan should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the United States of America, the British Commonwealth of Nations

(which expression wherever used in this Indictment includes the United Kingdom of Great Britain and Northern Ireland, the Commonwealth of Australia, Canada, New Zealand, South Africa, India, Burma, the Malay States, and all other parts of the British Empire not separately represented in the League of Nations), the Republic of France, the Kingdom of the Netherlands, the Republic of China, the Republic of Portugal, the Kingdom of Thailand (Siam), the Commonwealth of the Philippines, and the Union of Soviet Socialist Republics, or such of them as might oppose that purpose.

The whole of the Particulars in Appendix A, of the Treaty Articles in Appendix B, and of the Assurances in Appendix C, relate to this Count.

Count 5

All the accused together with other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was that Germany, Italy and Japan should secure the military, naval, political and economic domination of the whole world, each having special domination in its own sphere, the sphere of Japan covering East Asia, the Pacific and Indian Oceans and all countries bordering thereon and islands therein, and for that purpose they conspired that Germany, Italy, and Japan should mutually assist one another to wage declared or

undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against any countries which might oppose that purpose, and particularly against the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Republic of China, the Republic of Portugal, the Kingdom of Thailand (Siam), the Commonwealth of the Philippines, and the Union of Soviet Socialist Republics.

The whole of the Particulars in Appendix A, of the Treaty Articles in Appendix B, and of the Assurances in Appendix C, relate to this Count.

Count 6

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

The following Sections of the Particulars in Appendix A: Nos. 1 to 6 inclusive, and the same Treaty Articles and Assurances as in Count 2, relate to this Count.

Count 7

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United States of America.

The following Sections of the Particulars in Appendix A: Nos. 3, 4, 5, 6, 7, 9, and 10; the following Treaty Articles in Appendix B: Nos. 1 to 10 inclusive, 17 to 19 inclusive, 22 to 35, inclusive and 37; and the whole of the Assurances in Appendix C, relate to this Count.

Count 8

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United Kingdom of Great Britain and Northern Ireland and all parts of the British Commonwealth of Nations not the subject of separate counts in this Indictment.

The following Sections of the Particulars in Appendix A: Nos. 3, 4, 5, 6, 7, 9, and 10; the following Treaty Articles in Appendix B: Nos. 1, 2, 5, 10 to 19 inclusive, 22 to 30 inclusive, 32 to 35 inclusive, 37 and 38; and the whole of the Assurances in Appendix C, relate to this Count.

Count 9

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of Australia.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

Count 10

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances against New Zealand.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

Count 11

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against Canada.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

Count 12

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against India.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 8, relate to this Count.

Count 13

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation

of international law, treaties, agreements and assurances, against the Commonwealth of the Philippines.

The same Sections of the Particulars in Appendix A, and the same Treaty Articles and Assurances as in Count 7, relate to this Count.

Count 14

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of the Netherlands.

The following Sections of the Particulars in Appendix A: Nos. 3, 4, 5, 6, 7, 9, and 10; the following Treaty Articles in Appendix B: Nos. 1 to 5 inclusive, 10 to 18 inclusive, 20, 22 to 30 inclusive, 32 to 35 inclusive, 37 and 38; and the following Assurances in Appendix C: Nos. 10 to 15 inclusive, relate to this Count.

Count 15

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France.

The following Sections of the Particulars in Appendix A: Nos. 2, 3, 4, 5, 6, 7, 9, and 10; the following Treaty Articles in Appendix B: Nos. 1 to 5 inclusive, 10 to 19 inclusive, 22 to 30 inclusive, and 32 to 38 inclusive; and the following Assurances in Appendix C: Nos. 14 and 15, relate to this Count.

Count 16

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Kingdom of Thailand.

The following Sections of the Particulars in Appendix A: Nos. 2, 3, 4, 5, 6, 7, 9, and 10; and the following Treaty Articles in Appendix B: Nos. 3, 4, 5, 10 and 32 to 38 inclusive, relate to this Count.

Count 17

All the accused, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Union of Soviet Socialist Republics.

The following Sections of the Particulars in Appendix A: Nos. 1 to 8 inclusive; the following Treaty Articles in Appendix B: Nos. 1 to 5 inclusive, 10 to 18 inclusive, 32 to 35 inclusive, 39 to 47 inclusive, and Assurance No. 13 in Appendix C, relate to this Count.

Count 18

The accused ARAKI, DOHIHARA, HASHIMOTO, HIRANUMA, ITAGAKI, KOISO, MINAMI, OKAWA, SHIGEMITSU, TOJO and UMEZU, on or about the 18th September, 1931, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

Section 1 of the Particulars in Appendix A; and the following Treaty Articles in Appendix B: Nos. 1 to 5 inclusive, 11 to 14 inclusive, 22, 23, 25, 30, 40 to 43 inclusive, relate to this Count.

Count 19

The accused ARAKI, DOHIHARA, HASHIMOTO, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KAYA, KIDO, MATSUI, MUTO, SUZUKI, TOJO and UMEZU, on or about the 7th July, 1937, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

Section 2 of the Particulars in Appendix A; the same Treaty Articles as in Count 18, and the following Assurances in Appendix C; Nos. 3, 4 and 5, relate to this Count.

Count 20

The accused DOHIHARA, HIRANUMA, HIROTA, HOSHINO, KAYA, KIDO, KIMURA, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI, TOGO and TOJO, on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United States of America.

Section 9 of the Particulars in Appendix A; the following Treaty Articles in Appendix B: Nos. 1 to 9 inclusive, 19, 22 to 30 inclusive, 33, 34 and 37; and the whole of the Assurances in Appendix C, relate to this Count.

Count 21

The same accused as in Count 20, on or about the 7th December, 1941, initiated a war of aggres-

sion and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of the Philippines.

The same Particulars, Treaty Articles and Assurances as in Count 20, relate to this Count.

Count 22

The same accused as in Count 20, on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the British Commonwealth of Nations.

Section 9 of the Particulars in Appendix A; the following Treaty Articles in Appendix B: Nos. 1 to 5 inclusive, 19, 22 to 30 inclusive, 33 and 37; and the whole of the Assurances in Appendix C, relate to this Count.

Count 23

The accused ARAKI, DOHIHARA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MUTO NAGANO, SHIGEMITSU and TOJO, on or about the 22nd September, 1940, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France.

The same particulars, Treaty Articles and Assurances as in Count 15, relate to this Count.

Count 24

The same accused as in Count 20, on or about the 7th December, 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of Thailand.

Section 7 of the Particulars in Appendix A, and following Treaty Articles in Appendix B: Nos. 1 to 5 inclusive, 33, 34, 36, 37 and 38, relate to this Count.

Count 25

The accused ARAKI, DOHIHARA, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MATSUI, SHIGEMITSU, SUZUKI and TOJO, during July and August, 1938, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, by attacking the Union of Soviet Socialist Republics in the area of Lake Khasan.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

Count 26

The accused ARAKI, DOHIHARA, HATA, HIRANUMA, ITAGAKI, KIDO, KOISO, MATSUI, MATSUOKA, MUTO, SUZUKI, TOGO, TOJO and UMEZU, during the summer of 1939, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurances, by attacking the territory of the Mongolian People's Republic in the area of the Khackhin-Gol River.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

Count 27

All the accused, between the 18th September, 1931, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

The same Particulars, Treaty Articles and Assurances as in Count 2, relate to this Count.

Count 28

All the accused, between the 7th July, 1937, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China.

The same Particulars, Treaty Articles and Assurances as in Count 2, relate to this Count.

Count 29

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United States of America.

The following Sections of the Particulars in Appendix A: Nos. 4 to 10 inclusive; and the same Treaty Articles and Assurances as in Count 20, relate to this Count.

Count 30

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Commonwealth of the Philippines.

The same Particulars, Treaty Articles and Assurances as in Count 29, relate to this Count.

Count 31

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the British Commonwealth of Nations.

The following Sections of the Particulars in Appendix A: Nos. 4 to 10 inclusive; and the same Treaty Articles and Assurances as in Count 22, relate to this Count.

Count 32

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of the Netherlands.

The same Particulars, Treaty Articles and Assurances as in Count 14, relate to this Count.

Count 33

The accused ARAKI, DOHIHARA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MUTO, NAGANO, SHIGEMITSU and TOJO, on and after the 22nd September, 1940, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France.

The same Particulars, Treaty Articles and Assurances as in Count 15, relate to this Count.

Count 34

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war

of aggression and a war in violation of international law, treaties, agreements, and assurances, against the Kingdom of Thailand.

The same Particulars and Treaty Articles as in Count 24, relate to this Count.

Count 35

The same accused as in Count 25, during the summer of 1938, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Union of Soviet Socialist Republics.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

Count 36

The same accused as in Count 26, during the summer of 1939, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Mongolian People's Republic and the Union of Soviet Socialist Republics.

The same Particulars, Treaty Articles and Assurances as in Count 17, relate to this Count.

GROUP TWO: MURDER

The following Counts charge the crimes of murder, and conspiracy to murder, being acts for which it is charged that the persons named and each of them are individually responsible, being at the same time Crimes against Peace, Conventional War Crimes, and Crimes against Humanity, contrary to all the paragraphs of Articles 5 of the said Charter, to International

Law, and to the domestic laws of all the countries where committed, including Japan, or to one or more of them.

Count 37

The accused DOHIHARA, HIRANUMA, HIROTA, HOSHINO, KAYA, KIDO, KIMURA, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI, TOGO and TOJO, together with other persons, between the 1st June, 1940, and the 8th December, 1941, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was unlawfully to kill and murder the persons described below, by initiating unlawful hostilities against the United States of America, the Commonwealth of the Philippines, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Kingdom of Thailand (Siam), and by unlawfully ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the said nations or some of them at times when Japan would be at peace with the said nations.

The persons intended to be killed and murdered were all such persons, both members of the armed forces of the said nations and civilians, as might happen to be in the places at the times of such attacks.

The said hostilities and attacks were unlawful because they were breaches of Treaty Article 5 in Appendix B, and the accused and the said armed

forces of Japan could not therefore, acquire the rights of lawful belligerents.

Each of the accused intended that such hostilities should be initiated in breach of such Treaty Article, or were reckless whether such Treaty Article would be violated or not.

Count 38

The accused DOHIHARA, HIRANUMA, HIROTA, HOSHINO, KAYA, KIDO, KIMURA, MATSUOKA, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI, TOGO and TOJO, together with other persons, between the 1st June, 1940, and the 8th December, 1941, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was unlawfully to kill and murder the persons described below, by initiating unlawful hostilities against the United States of America, the Commonwealth of the Philippines, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Kingdom of Thailand (Siam), and unlawfully ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the said nations or some of them.

The persons intended to be killed and murdered were all such persons, both members of the armed forces of the said nations and civilians, as might happen to be in the places at the times of such attacks.

The said hostilities and attacks were unlawful because they were breaches of Treaty Articles 6,

7, 19, 33, 34, and 36 in Appendix B and the accused and the said armed forces of Japan could not, therefore, acquire the rights of lawful belligerents;

Each of the accused intended that such hostilities should be initiated in breach of such Treaty Articles, or were reckless whether such Treaty Articles or any if them would be violated or not.

Count 39

The same accused as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the United States of America, with which nation Japan was then at peace, at Pearl Harbor, Territory of Hawaii, on the 7th December, 1941, at about 0755 hours (Pearl Harbor time), unlawfully killed and murdered Admiral Kidd and about 4,000 other members of the naval and military forces of the United States of America and certain civilians whose names and number are at present unknown.

Count 40

The same accused as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory and airplanes of the British Commonwealth of Nations, with which nations Japan was then at peace, at Kota Bahru, Kelantan, on the 8th December, 1941, at about 0025 hours (Singapore time), unlawfully killed and murdered certain members of the armed forces of the British Commonwealth

of Nations whose names and number are at present unknown.

Count 41

The same accused as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the British Commonwealth of Nations, with which nations Japan was then at peace, at Hong Kong, on the 8th December, 1941, at about 0800 hours (Hong Kong time), unlawfully killed and murdered certain members of the armed forces of the British Commonwealth of Nations, whose names and number are at present unknown.

Count 42

The same accused as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack H. M. S. *Petrel,* a ship of the British Commonwealth of Nations, with which nations Japan was then at peace, at Shanghai on the 8th December, 1941, at about 0300 hours (Shanghai time), unlawfully killed and murdered three members of the naval forces of the British Commonwealth of Nations, whose names are at present unknown.

Count 43

The same accused as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory of the Commonwealth of the Philippines, with which

nation Japan was then at peace, at Davao, on the 8th December, 1941, at about 1000 hours (Manila time) unlawfully killed and murdered certain members of the armed forces of the United States of America and of the armed forces and civilians of the Commonwealth of the Philippines, whose names and number are at present unknown.

Count 44

All the accused together with other persons, between the 18th September, 1931, and the 2nd September, 1945, participated as leaders, organisers, instigators or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was to procure and permit the murder on a wholesale scale of prisoners of war, members of the armed forces of countries opposed to Japan who might lay down their arms, and civilians, who might be in the power of Japan, on land or sea, in territories occupied by Japan, and crews of ships destroyed by Japanese forces, in ruthless pursuit of victory in the unlawful wars in which Japan was, or would, during the said period be engaged.

Count 45

The accused ARAKI, HASHIMOTO, HATA, HIRANUMA, HIROTA, ITAGAKI, KAYA, KIDO, MATSUI, MUTO, SUZUKI and UMEZU, on the 12th December, 1937, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Nanking in breach of the Treaty Articles mentioned in Count 2 hereof and to

slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

Count 46.

The same accused as in Count 45, on the 21st October, 1938, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Canton in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

Count 47

The same accused as in Count 45, prior and subsequent to the 27th October, 1938, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Hankow in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

Count 48

The accused HATA, KIDO, KOISO, SATO, SHIGEMITSU, TOJO and UMEZU, prior and subsequent to the 18th June, 1944, by unlawfully ordering, caus-

ing and permitting the armed forces of Japan to attack the City of Changsha in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

Count 49

The same accused as in Count 48, prior and subsequent to the 8th August, 1944, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Hengyang in the Province of Hunan in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.

Count 50

The same accused as in Count 48, prior and subsequent to the 10th November, 1944, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the Cities of Kweilin and Liuchow in the Province of Kwangsi in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 51

The accused ARAKI, DOHIHARA, HATA, HIRANUMA, ITAGAKI, KIDO, KOISO, MATSUI, MATSUOKA, MUTO, SUZUKI, TOGO, TOJO and UMEZU, by ordering, causing and permitting the armed forces of Japan to attack the territories of Mongolia and the Union of Soviet Socialist Republics, with which nations Japan was then at peace, in the region of the Khalkhin-Gol River in the summer of 1939, unlawfully killed and murdered certain members of the armed forces of Mongolia and the Union of Soviet Socialist Republics, whose names and number are at present unknown.

Count 52

The accused ARAKI, DOHIHARA, HATA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MATSUI, SHIGEMITSU, SUZUKI and TOJO by ordering, causing and permitting the armed forces of Japan to attack the territory of the Union of Soviet Socialist Republics, with which nation Japan was then at peace, (in the region of Lake Khasan in the months of July and August 1938) unlawfully killed and murdered certain members of the armed forces of the Union of Soviet Socialist Republics, whose names and number are at present unknown.

GROUP THREE: OTHER CONVENTIONAL WAR CRIMES AND CRIMES AGAINST HUMANITY

The following Counts charge conventional War Crimes and Crimes against Humanity, being acts for which it is charged that each of the persons named are individually responsible, in accord-

ance with Article 5 and particularly Article 5 (b) and (c) of the Charter of the International Military Tribunal for the Far East, and in accordance with International Law.

Count 53

The accused, DOHIHARA, HATA, HOSHINO, ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO and UMEZU, together with other persons, between the 7th December, 1941, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was to order, authorise and permit the Commanders-in-Chief of the several Japanese naval and military forces in each of the several theatres of war in which Japan was then engaged, the officials of the Japanese War Ministry, the persons in charge of each of the camps and labour units for prisoners of war and civilian internees in territories of or occupied by Japan, the military and civil police of Japan, and their respective subordinates, frequently and habitually to commit the breaches of the Laws and Customs of War, as contained in and proved by the Conventions, assurances and practices referred to in Appendix D, against the armed forces of the countries hereinafter named and against many thousands of prisoners of war and civilians then in the power of Japan belonging to the United States of America, the British Commonwealth of Nations, the Republic

of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics; and that the Government of Japan should abstain from taking adequate steps, in accordance with the said Conventions and assurances and Laws and Customs of War, to secure observance and prevent breaches thereof.

In the case of the Republic of China, the said plan or conspiracy began on the 18th September, 1931, and the following accused participated therein in addition to those above-named: ARAKI, HASHIMOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

Count 54

The accused DOHIHARA, HATA, HOSHINO, ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO and UMEZU, between the 7th December, 1941, and the 2nd September, 1945, ordered, authorised and permitted the commanders-in-chief and other persons mentioned in Count 53 to commit the offences therein mentioned and thereby violated the laws of War.

In the case of the Republic of China the said orders, authorizations and permissions were given in a period beginning on the 18th September, 1931, and the following accused were responsible for the same in addition to those named above: ARAKI, HASHIMOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

Count 55

The accused DOHIHARA, HATA, HOSHINO, ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO and UMEZU, between the 7th December, 1941, and the 2nd September, 1945, being by virtue of their respective offices responsible for securing the observance of the said Conventions and assurances and the laws and Customs of War in respect of the armed forces in the countries hereinafter named and in respect of many thousands of prisoners of war and civilians then in the power of Japan belonging to the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics, deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches thereof, and thereby violated the laws of war.

In the case of the Republic of China, the said offence began on the 18th September, 1931, and the following accused were responsible for the same in addition to those named above: ARAKI, HASHIMOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

Wherefore, this Indictment is lodged with the Tribunal, and the charges herein made against the above-named accused are hereby presented by the Tribunal.

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Chief of Counsel, acting on behalf of the United States of America.

HSIANG CHE-CHUN
Associate Counsel, acting on behalf of the Republic of China.

A. S. COMYNS CARR
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A. J. MANSFIELD
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H. G. NOLAN
Associate Counsel, acting on behalf of Canada.

ROBERT ONETO
Associate Counsel, acting on behalf of the Republic of France.

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